IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.179/2003

Shri Sandeep Raut, major,
Member Zilla Panchayat,
Salem, Bicholim, Goa. .... Petitioner.

V/s.

1. State of Goa,
through its Chief Secretary,
Secretariat, Panaji, Goa.

2. Dy. Director Vigilance
Directorate of Vigilance,
Government of Goa,
Serra Bldg., Near A.I.R.,
Altinho, Panaji, Goa.

3. The District Rural Development
Agency, through its Project
Director, North Goa, Shanta
Building, 2nd Floor, St.Inez,
Panaji, Goa.

4. Village Panchayat of Salem,
through its Sarpanch,
Salem, Bicholim, Goa.

5. Shri Godfrey Lawrence,
major, proprietor of
Goofy's Countryside Hermitage,
Office F-3, Green Valley,
Vollant, Betim, Bardez, Goa. .... Respondents.

Mr. S.S. Kantak, Advocate for the Petitioner.

Mr. G.V. Tamba, Addl. Govt. Advocate for respondents No.1 to 3.

Mr. V.R. Tamba, Advocate for respondent No.4.

Mrs. A. Agni, Advocate for respondent No.5.

CORAM : F.I. REBELLO &
P.V. HARDAS, JJ.

DATE : JUNE 9, 2003.

ORAL JUDGMENT : (Per REBELLO, J.)

Rule. The respondents waive service. Heard forthwith.

2. The petitioner, by the present petition, impugns the decision dated 7.2.2003 by which, amongst others, a direction has been issued on behalf of respondent No.1 to the Project Director, District Rural Development Agency, that the road which has been blocked should be restored immediately and also a F.I.R. be filed with the police for damage to public property. Earlier, another petition had been filed before this Court at the instance of respondent No.5, being Writ Petition No.432/2002. By order dated 11.3.2003, the petition came to be disposed of, consequent to the order dated 7.2.2003. However, while passing the order, it was made clear that it was without prejudice to the rights and contentions of the parties concerned with or affected by the decision of the Director/Dy. Director.

3. It is the grievance of the petitioner that when information was sought on the material based upon which the order came to be passed and which is dated 7.2.2003, the respondent had informed that apart from the said decision that there is no other material or order. This is reflected in the order dated April 7, 2003 passed in Misc. Civil Application No.191/2003 in Writ Petition No.432/2002.

4. At the hearing of this petition, on behalf of the petitioner, various challenges have been raised. However, the petition could be disposed of on the very first contention which is that before passing the order dated 7.2.2003, which has resulted in the civil consequences, no opportunity had been given to the petitioner of being heard nor the material which respondents No.1 and 2 have relied upon while passing the said decision, was made available. It is, therefore, contended that the said order is in violation of the principles of natural justice and fair play and consequently is liable to be set aside.

On behalf of the private contesting respondent, it is contended that merely because the petitioner seeks opportunity when the opportunity itself is useless, there is no requirement of following the principles of natural justice and fair play. For that purpose, reliance is placed on the case of Aligarh Muslim University and others v. Mansoor Ali Khan, (2000) 7 SCCs 529. In that case, the issue pertained to conditions of service of an employee and it is in that context that observations have been made by the Apex Court regarding compliance of the principles of natural justice.

5. In the instant case, the impugned order firstly would result in a road being now constructed in the property of the petitioner. The contention of the petitioner is that there was no such road existing earlier. Secondly, there is a direction that F.I.R. will be filed for damage to public property. The first would result in civil consequences and the second would result in penal consequences. In these circumstances, it is clear that the civil rights of the petitioner would be affected. Once civil rights are affected, requirements of the natural justice have to be complied. That order could not have been passed without giving proper opportunity of being heard before passing the order dated 7.2.2003 and also making available to the petitioner the material relied upon by the respondents whilst passing the order. In that view of the matter, the judgment earlier cited on behalf of respondent No.5 is clearly distinguishable.

By order of this Court in Writ Petition No.432/2002, six months period was granted for carrying out the directions. That six months' period would be expiring sometime in September, 2003.

6. Considering the above, the following directions :

The respondents No.1 and 2 are directed to issue show cause to the petitioner as to why order dated 7th February, 2003 should not be confirmed and to give an opportunity of being heard to the petitioner and respondent No.5, including giving the material which they relied upon while passing the order of 7.2.2003. The petitioner herein, thereafter, within 15 days of the receipt of the show cause notice to reply to the same. Respondent No.2, thereafter, shall decide the same according to law. If being satisfied with the explanation offered by the petitioner, it would be open to respondent No.2 to recall order dated 7.2.2003 if not to pass any appropriate order or confirm the earlier order. In case the respondent No.2 comes to a decision that the order dated 7.2.2003 is not to be recalled, in that event, the directions as contained in order dated 11.3.2003 be complied with on or before 31/11/2003

Rule made absolute accordingly.

P.A. to issue authenticated copy of the Judgment.

F.I. REBELLO, J.

P.V. HARDAS, J.

ssm.